

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

INTEGRATED CONTROL SYSTEMS	:
INC., & ROBERT A. JACOBSEN,	:
Plaintiffs,	:
	:
-vs-	: Civ. No. 3:00cv1295 (PCD)
	:
ELLCON-NATIONAL, INC.,	:
Defendant.	:

RULINGS ON MOTION FOR RECONSIDERATION AND MOTION FOR LEAVE TO FILE
MOTION FOR PROTECTIVE ORDER

Plaintiff, Integrated Control Systems, Inc., moves for reconsideration of the ruling denying its motion for a protective order. Non-party IMPAC Integrated Systems (“IMPAC California”), Inc. moves for leave to appear for purposes of filing a protective order precluding the production of financial documents in the possession of plaintiff’s accountant. For the reasons set forth herein, the motion for reconsideration is **granted**, and the motion for a protective order is **granted**. The motion for leave to appear is **denied**.

I. BACKGROUND

By ruling dated May 21, 2002, defendant was permitted to depose Richard Strada, plaintiffs’ accountant. On November 14, 2002, plaintiff and Richard Strada sought a protective order precluding the production of documents pertaining to companies bearing the name “IMPAC,” the alias of ICS, and “Integrated Control Systems.” On December 4, 2002, the motion was denied on the ground that “[a]lthough it is ICS’s position that companies bearing the IMPAC or ICS name incorporated outside of Connecticut are not its alter egos, it has not established the same and thereby established good cause for issuance of a protective order.” On December 18, 2002, IMPAC California, filed the present

motion seeking leave to appear for purposes of filing a protective precluding production of documents in Mr. Strada's possession pertaining to it.

II. DISCUSSION

In light of plaintiff's assertion that Mr. Strada is a "private" accountant, which this Court interprets to mean independent accountant, the ruling denying the production of documents as to companies incorporated outside Connecticut bearing the name IMPAC and Integrated Control Systems is granted. The protective order renders the motion filed by IMPAC California moot.

This ruling does not preclude later reconsideration of the order should defendant discover evidence implicating third parties through its review of plaintiff's records. In light of the numerous post-judgment filings in the present case, and in an effort to efficiently resolve questions as to plaintiff's assets, plaintiff will produce the following:

1. To the extent such documents have not already been produced, all financial records from March 1, 1998, to present, including bank records, state and federal tax records, and state and federal corporate filings;
2. Details as to any practice requiring direct payment to third parties for property or services rendered and any records as to those payments, if applicable;
3. For any bank transfer, a detailed explanation as to the recipient of the transfer and the reason for the transfer; and
4. Details as to Mr. Strada's professional affiliation, including his accounting credentials, entity or entities from which he receives his salary, place or places of residence, etc.

As indicated in prior rulings, a creditor “is entitled to discover the identity and location of any of the judgment debtor’s assets, wherever located.” *Nat’l Serv. Indus. v. Vafla Corp.*, 694 F.2d 246, 250 (11th Cir. 1982). Notwithstanding plaintiffs’ argument to the contrary, discovery related to the assets of non-judgment debtors is permissible when there is a reasonable belief that they have received assets transferred from the judgment-debtor, or a third party is believed to be the alter ego of the judgment debtor, *see First City, Texas Houston, N.A.*, 281 F.3d 48, 54 (2d Cir. 2002). However, prior to permitting inquiry into the records of third parties, defendant must establish to the satisfaction of this Court that (1) that Mr. Strada is not, in fact, an independent accountant and (2) that it has uncovered some evidence after exhaustive review of plaintiff’s records in the form of financial transaction or property transfers implicating purported third parties. Permission will not be given based only on the similarity of corporate names as such would not form the basis for a reasonable belief.

This should in no way be construed as unduly restricting defendant’s right “to make a broad inquiry to discover hidden or concealed assets of the judgment debtor.” *Id.* (internal quotation marks omitted). Defendant is given leave to do so, and plaintiff as judgment debtor is obliged to provide a detailed statement of its financial status and disposition of assets. The present ruling does no more than require that defendant first exhaust discovery available from plaintiff prior to attempting to proceed to discovery from alleged third parties. In order to proceed with discovery of third parties, defendant must establish that the discovery sought is relevant to enforcement of its judgment against plaintiff. Defendant has not yet satisfied this showing of relevancy, thus it may appropriately seek information as to those third parties.

III. CONCLUSION

The motion for reconsideration (Doc. No. 51) is **granted**, the ruling denying the motions for a protective order is vacated, and the motions for a protective order (Doc. Nos. 39 & 41) are

granted as consistent with this ruling. The motion for leave to appear (Doc. No. 53) is **denied** as moot. The ruling granting defendant's motion to compel (Doc. No. 49) is **vacated** to the extent it is inconsistent with this ruling.

SO ORDERED.

Dated at New Haven, Connecticut, January ___, 2003.

Peter C. Dorsey
United States District Judge